

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLEEN G. HOLMES and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Bay Pines, Fla.

*Docket No. 96-261; Submitted on the Record;
Issued March 6, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction in force or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office of Workers' Compensation Programs, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

In the present case, appellant, a registered nurse, alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated April 27, 1995, the Office denied appellant's claim on the grounds that she did not establish any compensable employment factors and by decision dated October 4, 1995, the Office affirmed its April 27, 1995 decision. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that for one and a half years she was improperly required to "float" between other psychiatric wards for two or three evenings per week; that, in addition to her other duties, she was unfairly required to be in charge of the licensed practical nurse who worked in her unit; that she was denied a request to transfer out of her work unit, but that an agreement was made to delay the transfer until a new psychiatric unit was formed; that she was disciplined on three occasions for making errors in administering medication and that she faced possible termination from the employing establishment; that between 1986 and 1988 she was unfairly transferred between psychiatric units on three occasions; that she was unfairly denied promotions in 1986 and 1987 before being promoted in 1988; that in 1991 she was wrongly charged with five days of leave without pay and was falsely accused of not completing the proper paperwork in connection with the matter; that the employing establishment initially denied her physician-approved request to take two weeks of sick leave; that after she transferred to a position as a nurse assistant in 1994 she still was unfairly required to "float" between work sites; and that she only accepted the transfer, which she felt adversely affected her career, because she was told that she could not be placed in any other position.

The Board notes that these above-described matters relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.⁷ Although work assignments, disciplinary actions, employment

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ *See Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

evaluations, promotions, transfers and leave determinations are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.⁸ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁹ Appellant did not submit sufficient evidence to show that the employing establishment committed error or abuse with respect to any of these administrative or personnel matters. The record contains a settlement of an Equal Employment Opportunity (EEO) claim which resulted in appellant receiving a promotion, but the settlement specifically indicates that it was reached without prejudice to the employing establishment. Although the employing establishment eventually changed appellant's five days of leave without pay to five days of annual leave, there is no evidence that it committed error or abuse with respect to this matter. The mere fact that personnel actions were later modified or rescinded, does not in and of itself, establish error or abuse.¹⁰ For these reasons, appellant has not established a compensable employment factor under the Act with respect to these administrative and personnel matters.¹¹

Appellant claimed that she was subjected to harassment and discrimination by various superiors. Appellant claimed that, when she discussed her floating between units with a superior, she was accused of overstepping her bounds and was given a lower work performance rating; that a nurse manager made remarks regarding her interracial marriage; that she filed an EEO claim after the employing establishment transferred her and her husband, a coworker, to other units; that she was "blacklisted" and viewed as being a threat because she wrote memoranda regarding various matters at work; that in 1989 she filed a grievance against Carol Griffiths, a clinical coordinator, for accusing her of "meddling" when she requested a written policy regarding the searching of patients upon hospital admission; that she was told that Becky Hamblett, the chief nurse, had decided to "make examples" of nurses who did not follow the rules; that in 1991 Helen Murray, a nurse manager, told her that she would "never get anywhere" at work because she was too outspoken; and that her salary was lower than those of other nurses with similar education and experience.

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors are established as occurring and arising from appellant's

⁸ *Id.*

⁹ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹⁰ *Michael Thomas Plante*, 44 ECAB 510, 516 (1993).

¹¹ Moreover, regarding appellant's allegation of denial of promotions, the Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position. *Donald W. Bottles*, 40 ECAB 349, 353 (1988). Regarding her allegation that she developed stress due to insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity, including fear of a reduction-in-force, is not a compensable factor of employment under the Act; see *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

performance of her regular duties, these could constitute employment factors.¹² However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹³ In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors.¹⁴ Appellant alleged that supervisors made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹⁵ Appellant filed grievances with respect to some of these matters, but the record does not contain any finding of harassment or discrimination. With respect to the claim that Ms. Murray told appellant that she would “never get anywhere,” Ms. Murray explained that this comment was taken out of context in that she merely told appellant she needed a masters degree in order to advance in her chosen field. Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant indicated that she routinely worked her unit alone and, therefore, was subjected to isolation and inability to take breaks during her work shift. The Board has held that an employee’s dissatisfaction with working in an environment which is considered to be undesirable constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹⁶ Moreover, appellant did not submit sufficient evidence to support the factual aspect of this allegation; the record contains statements from coworkers and superiors which indicate that appellant was not isolated or denied breaks. Appellant alleged that the nursing assistant position caused severe back pain which aggravated her mental condition. The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury is covered under the Act.¹⁷ The Office has not accepted that appellant had continuing residuals of an employment-related condition and appellant has not otherwise established the factual aspects of this allegation. She further alleged that the implementation of a geriatric psychiatric unit on the same floor as her work unit caused a “very volatile situation” but she did not adequately explain the nature of this situation. Appellant indicated that she attended a lecture at work regarding depression in the elderly and became upset because she related the topic of the lecture to her own future mental state. She did not, however, adequately explain how this matter related to her regular or specially assigned duties.

¹² *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹³ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁴ *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁵ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁶ *See David M. Furey*, 44 ECAB 302, 305-06 (1992).

¹⁷ *See Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.¹⁸

The decisions of the Office of Workers' Compensation Programs dated October 4 and April 17, 1995 are affirmed.

Dated, Washington, D.C.
March 6, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

¹⁸ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).